LABOR POLICIES OF THE TRANSPORTATION ACT FROM THE POINT OF VIEW OF RAILWAY MANAGEMENT

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A DISCUSSION of the labor policies of the Transportation Act from the point of view of railway management is hardly within the province of a member of a railroad legal department, but I shall address my remarks simply to a statement of facts which will authoritatively set forth the policy of the company which I have the honor to serve, and some phases of the controversy with the United States Railroad Labor Board which led to our appeal to the United States Court at Chicago.

Section 301 of the Transportation Act declares it to be the duty of all carriers and their officers and employees to exert every reasonable effort and to adopt every available means to avoid any interruption in the operation of any carrier growing out of any dispute between the carrier and its employees, or its subordinate officials. All such disputes shall be considered and, if possible, decided in conference between representatives designated and authorized so to confer by the carriers, or employees, or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the parties thereto to the Board, which, under the provisions of the title, is authorized to hear and decide such dispute.

In Decision No. 119 the Labor Board assumed to terminate the National Agreements, and called upon the officers and system organizations of employees to designate and authorize representatives to confer and decide so much of the disputes relating to working rules and conditions as it might be possible for them to decide in conference, although no dispute as to rules and working conditions had been referred to the Board under the Transportation Act. To this decision the Board attached and assumed to prescribe sixteen principles to govern

such conference and required such conference to conform thereto. Principle No. 5 declared the right of a lawful organization to act towards lawful objects through representatives of its own choice, whether such representatives were employees of the carrier or not, and declared further that the carrier must agree to such principle.

Principle No. 15 declared that the majority of any craft or class of employees shall have the right to determine what organization shall represent members of such craft or class. Such organization shall have the right to make an agreement which shall apply to all employees in such craft or class. It was provided, however, that no such agreement shall infringe upon the right of employees not members of the organization representing the majority to present grievances either in person or by representatives of their own choice.

While not conceding that the Labor Board had at any time acquired jurisdiction over the National Agreements, or that it had any right or power to revive and perpetuate the same, as it did in Decision No. 119, or that it had power to prescribe the principles which it attached to said Decision No. 119, the Pennsylvania Railroad Company endeavored to comply with the said decision and the said principles. Though not recognizing any obligation so to do, our company called into conference its several classes of employees with the view to negotiating with each class, respectively, rules and working conditions to govern and control the relations between it and its employees, in lieu of the National Agreements, which had ceased to exist, and to which our company was in no wise a party.

There was upon our lines a labor union in the shop crafts known as System Federation No. 90, which is affiliated with and is a branch of the Railway Employees Department of the American Federation of Labor. The officers of System Federation No. 90 proposed to confer with the company and to negotiate rules in accordance with Decision No. 119 of the Railroad Labor Board. Our company refused to negotiate with such officers, but, while recognizing no legal obligation so to do, offered to negotiate with committees of its employees composed of men actually engaged in its service, regardless of whether the members of such committees were or were not members of System Federation No. 90.

It may be here stated that it has been the policy of our company, since the termination of Federal control, to re-establish with its own employees a harmonious relationship, bearing in mind that honest, efficient and economical operation of its lines can be secured only by close and unrestricted co-operation by the management and its employees. To that end it determined that all classes of employees should have a voice in the administration of matters affecting their welfare through representatives of their own selection, provided that such representatives, whether union or non-union men, should be actual employees. The officers of System Federation No. 90 declined to cooperate with the carrier in the selection of committees to represent employees with whom the carrier might negotiate rules and working conditions. Thereupon the company, with the cooperation of certain employees in the shop crafts, though recognizing no legal obligation so to do, prepared and distributed to such employees a ballot upon which each employee might designate employee-representatives to confer with the company as to rules and working conditions.

After the distribution of such ballots the officers of System Federation No. 90 distributed ballots to all such shop craft employees and warned each such employee not to use the ballot furnished by the carrier, and directed each such employee to vote for System Federation No. 90 as his representative for such conference. Our company recognized the result of the election which it conducted, and thereupon entered into conferences as to rules and working conditions with the employee-representatives so chosen.

Thereafter System Federation No. 90, by Mr. B. M. Jewell, President, Railway Employees Department, American Federation of Labor, filed with the Labor Board an application for decision, complaining that the carrier had refused to negotiate rules and working conditions with the officers of System Federation No. 90 and was proceeding to negotiate rules and working conditions with committees selected in the manner aforesaid, and by reason of the premises had violated Decision No. 119, and particularly Paragraph 2 thereof and Principles 5 and 15 attached to the said decision. Thereafter the Board rendered its Decision No. 218, in which it said: " Under the authority of the Transportation Act as hereinbefore cited, the

Labor Board hereby declares that both of said elections on the Pennsylvania System were illegal and that rules negotiated by the alleged representatives selected by either ballot will be void and of no effect, and orders that a new election be held."

Thereupon the company made application to the Board to vacate and set aside its said Decision No. 218, expressly denying the right and power of the Board to prescribe principles which must in law govern the carrier and its employees in the making of agreements covering working rules and conditions. Notwithstanding this, however, the company asserted that it had endeavored in negotiations with its employees to adopt and observe such of the said principles as are fundamentally sound and correct.

The Board decided that it had acquired full jurisdiction, but it declared "that question is not of prime importance in this case." The Board also declared: "There is no question of the closed or open shop involved in this dispute and no other real matter of principle; the question involved is merely one of procedure." With these propositions the company took direct issue and represented to the Board that if the question was merely one of procedure the Board had no right or power to set up its judgment or opinion against that of the carrier. Dissatisfaction, whether real or fancied, by certain employees with matters of "mere procedure" should not be tortured into a "dispute" within the purview of Sections 301 and 307 of the Transportation Act. It was claimed that no fear need be entertained of "interruption to the operation of any carrier" because of differences between carrier and employees upon questions of "mere procedure." Disputes under the law, referable to the Board, are those of substance and real moment. Reduction of wages, real grievances, unfair, unreasonable, burdensome working rules and conditions are the matters comprehended by the Transportation Act as prolific of "disputes" which might interrupt transportation, to prevent which the Labor Board was created. The company denied the power of the Board to prescribe an election, or any other method, by which the carrier may ascertain who are the authorized representatives of its employees; and it averred that it could not accept as advisory the rules and conditions set forth in the Board's decision in the case, especially the form of the ballot

and the franchise qualifications fixed and determined by the Board.

The company represented that, as the occasion requires, it will accord franchise rights only to its employees in service, or absent upon leave, and will not concede voting qualifications to men who have been laid off or furloughed and who may be engaged in other occupations or who may never return to the service of the carriers.

The company denied the power of the Board to compel a conference or to prescribe with what representatives of employees it shall confer, and it declared that it could not accede to the rule prescribed for ascertaining the representative capacity of the spokesmen for unorganized employees. The Board was advised that there were in the service of the carrier at that time approximately 176,000 employees who were interested in and affected by rules covering working conditions, and that 117,176, or 66.5%, of said employees had expressed, by vote or otherwise as a result of conference a desire to negotiate rules and working conditions through employee-representatives, and that accordingly contracts respecting rules and working conditions had been entered into between the carrier and representatives of 149,918 employees apportioned among the several classes named to the Board. These contracts were put into full force and effect, and by their terms the parties thereto acquired mutual rights and assumed mutual obligations.

We further represented that since the Board had handed down its Decision No. 218 the company had held conferences with representatives of the several crafts with whom contracts had been made for the purpose of ascertaining whether or not, in the light of the said decision, said employees were satisfied with the manner of selecting representatives and with the rules and working conditions actually agreed to; and that as a result of said conferences the said employees, through their representatives, manifested their satisfaction not only with the manner of selecting representatives, but also with the rules and working conditions embodied in the said agreements.

The company thereupon asked the Board to vacate and set aside its Decision No. 218 and to find in pursuance of the Transportation Act: (a) that the company had the lawful

right to establish rules and working conditions in the first instance, either with or without first holding conferences with employees; and (b) that the contracts respecting rules and working conditions theretofore entered into by the carrier and its employees in the shop crafts are now in full force and effect without any further action on the part of the carrier and its employees in the said shop crafts.

The Board denied the company a further hearing upon any questions other than those involving matters connected with franchise rights and the election, the decision as to which the Board refused to vacate.

Another effort was made by the company to settle peaceably its controversy with the Board, and it respectfully submitted a reply to the Board's last decision, setting forth that the said decision was not responsive to the company's application, and it expressly represented to the Board that the company had not denied and was not now denying the jurisdiction of the Labor Board to hear and decide such disputes as fall within the purview of the Transportation Act, but it denied the right of the Board to invade the domain of management and to assert jurisdiction over grievances of whatsoever kind or character in connection with the employment, the discipline and the discharge of its employees.

Section 313 of the Transportation Act provides that the Labor Board, in case it has reason to believe that any decision of the Labor Board is violated by any carrier or employee, may upon its own motion, after due notice and hearing to all persons directly interested in such violation, determine whether in its opinion such violation has occurred and make public its decision in such manner as it may determine.

Upon our failure to comply with its decision the Board cited our company to appear before it in accordance with this section, and we appeared for the purpose of informing the Board that we could not accept as a lawful decision the declaration of the Board that the election under which the employee-representatives were chosen was illegal and that the rules and working conditions agreed upon by such employee-representatives and the management were void and of no effect.

This position was taken and maintained by the company because it was of the opinion that the Board had no jurisdiction

over the matter which was the subject of the decision. Conforming to the letter and the spirit of the Transportation Act, the carrier pledged itself to the principle of collective bargaining with its employees by and through the medium of employee-representatives of their own selection, and in good faith and with the cooperation of a large majority of its employees of all classes entered upon a policy which promised good and lasting results in promoting harmony of action and full understanding of conditions between employees and management.

A minority of employees, represented by System Federation No. 90, were opposed to employee representation and claimed the right to negotiate concerning rules and working conditions through the shop crafts' labor organization. This the company deemed subversive of its lawful right to deal with its own employees without the intervention of individuals or organizations whose manifest object is the denial of the fundamental right of employer and employee to deal in the first instance with one another respecting wages and working conditions in which they alone are directly interested. And, again, the company emphasized the fact that in cases of dispute in relation to wages and working conditions it has ever been willing to submit the dispute to the Labor Board and to abide by its decision in full acquiescence in and acceptance of the provisions of the Transportation Act.

The company stated that it had not " violated " any decision of the Labor Board in the sense that it had set at nought and refused to comply with the lawful pronouncement of the Board; neither had it " violated " any provision of the Transportation Act nor " defied " the Labor Board or the Congress which created it. On the contrary, the company has conceded the jurisdiction of the Labor Board to hear and decide such disputes as fall within the purview of the Transportation Act, and it is a willing party to several submissions now pending before the Board in the matter of wages and working rules and conditions.

The company further stated that in its opinion the Board in its said Decision No. 218 had without warrant of law exercised the functions of an administrative or regulatory body, and as such had assumed to invade the domain of management and to assert jurisdiction over matters solely referable to the func-

tions of railway management. The company believed the Labor Board to be under the law creating it not an administrative but a mediative body, and it pointed to the fact that the chairman of the Board had referred to the Board at one time as an "impartial mediatory body."

We further stated that we strongly deprecated any controversy with the Board with respect to the powers or jurisdiction conferred upon it by the Transportation Act, and, if compliance with the decision had involved no serious consequences, the company in order to avoid any controversy on the subject would have submitted to the decision, notwithstanding its belief that the Board had assumed a jurisdiction not conferred upon it by Congress. But the company, in the consideration of the question as to whether the directions of the decision should be observed, was obliged to determine whether the system of employee representation which it had inauguratd was to be impaired and its usefulness and value largely destroyed, or whether in order to avoid non-compliance with the decision it should, in considering and determining what rules governing working conditions should be established, consult with an organization which, the company believes, advocates (a) the closed shop, (b) the sympathetic strike, and (c) limitation of output, and which had been largely instrumental in framing rules governing the operation of shops during the period of Federal control. The company asserted that these rules had reduced the efficiency of shop labor on its lines to the extent of at least thirty-five per cent, and attention was called to the fact that the late Judge Prouty, when a member of the Railroad Administration, after an investigation made by him, publicly announced that upon the Pennsylvania Lines East labor upon that system was inefficient as compared with private operation, the percentage of inefficiency in some cases being as much as 33⅓%.

The company, therefore, respectfully represented to the Board that it should not consider Decision No. 218 as a lawful exercise of its powers and that the carrier should not be held by the Board as having "violated" a lawful decision of the Board; and the company reasserted its purpose and willingness to comply in all respects with the provisions of the Transportation Act and to submit itself to the jurisdiction of the Labor Board in all matters cognizable thereunder.

Notwithstanding this appeal, the company was informed that the Board was preparing a decision to be published to the world that the Pennsylvania Railroad Company had violated its decision and the law of the land. It was the opinion of the company that the purpose and intent of Section 313 is to induce and impel through the coercive force of public opinion compliance by any carrier or person affected by an order of the Labor Board with the terms and provisions of the same, and the company deemed it neither equitable nor just that it should be subjected to such coercive influence in respect to any order of the Board which the Board was without authority to make, and that, consequently, the Board should be restrained by an order of court from subjecting plaintiff to the coercive process prescribed by the said provision of the Transportation Act in respect to the order which the Company had declined to obey because the subject matter thereof was not within the jurisdiction of the Board.

Thereupon, a petition was filed in the United States Court and Judge Landis granted a temporary restraining order to prevent the publication by the Board that our company had violated any legal decision of the Board or had failed to comply with and observe the provisions of Title III of the Transportation Act.

The case finally came on for hearing before Honorable George T. Page, United States Circuit Judge, upon defendants' motion to dismiss the bill and a so-called answer which denies none of the averments contained in the petition. For the defendants, it was argued (1) that the Labor Board is an administrative arm of the government over which the courts have no jurisdiction; and (2) that the Board had the power exercised by it under Decisions 119 and 218. The court's finding on both points was adverse to the Labor Board's contention.

The court decided that "the appointment or method of election of conferees under Section 301 was not one of the functions delegated to the Board, and therefore it had not the right to make the regulations provided for in Decision No. 218," and it expressed the "opinion that the purpose of Section 301 was to leave to the carrier and its employees full liberty to get together in their own way."

The constitutionality of the act was sustained by the court.

and in this connection I desire to make it clear that it was and is the declared policy of our board of directors and executive officers not to question the constitutionality of the Labor Board provisions of the Transportation Act so long as the Board exercises its functions in accordance with the terms of the act. And in our bill of complaint, we raised the constitutional question only in the event that the court should find that the Board was acting within its legal powers. If so, it was our claim that the exercise of such power would deprive us of certain constitutional rights. The court sustained our contention that the Board had not properly interpreted the act, and we are satisfied with its finding in all respects.

Naturally, we are gratified by Judge Page's decision, not because of any pride of opinion sustained but because it may be known of all men that our company, in objecting to the Labor Board's decision, was actuated by an earnest and well founded desire to protect its legal rights and those of its employees from what we deemed to be an unwarranted assumption of authority on the part of the Labor Board.

As in the past, so in the future the Pennsylvania Railroad System will subject itself to the jurisdiction of the Board in strict conformity to the terms of the act, and it will abide by the Board's decisions unless they be of such a character as will necessitate or justify an appeal by the company in an orderly manner to the courts, or to the bar of public opinion. This privilege is enjoyed alike by all carriers and their employees.

I desire also to say that no feelings of hostility, personal or official, have been engendered between the Labor Board and our company, and that a fine spirit of cooperation has been displayed by the Board in the taking of steps to secure a judicial and authoritative determination of the legal questions which have been the subject of argument and consideration.